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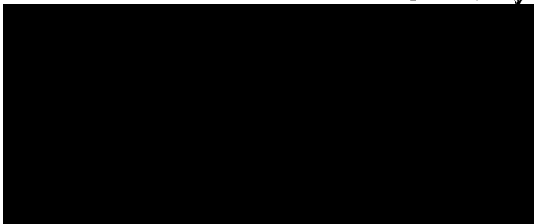
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
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Services

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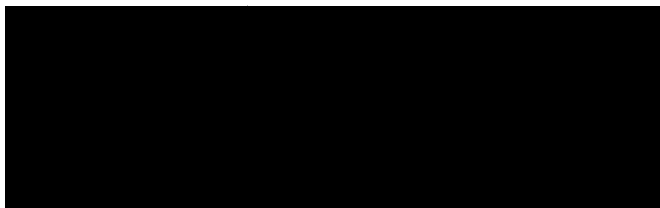
FILE: WAC 02 207 52689 Office: CALIFORNIA SERVICE CENTER Date:

FEB 06 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

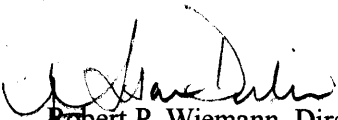
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a pharmaceutical management company that seeks to employ the beneficiary as a public relations specialist (health care services). The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a public relations specialist. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's

response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: designing, coordinating, implementing, and analyzing public relations strategies, materials, and campaigns; resolving account-related issues; planning and administering marketing policies; analyzing service rates and statistical data to forecast business expansion; and gathering data about competitors. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in communications or business or an equivalent degree plus one year of related experience.

The director found that the proffered position was not a specialty occupation. The director noted that, as delineated in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the beneficiary's duties reflect those of a public relations specialist. The director mentioned that the *Handbook* reports that baccalaureate level training is excellent preparation for entry into the occupation; nevertheless, a bachelor's degree is not normally required to enter into a public relations specialist position. The director also found that the petitioner did not establish the other three criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director erred in his interpretation and conclusion regarding the documentary evidence; in his lack of adhering to adjudication guidelines or applicable precedent decisions, or both; in not addressing the issues and points raised by the petitioner; and in not providing the petitioner with an avenue to clarify evidentiary questions.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slaterry*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

Counsel claims that the *Handbook* reports that a public relations specialist position requires a bachelor's degree to enter the occupation; thus, satisfying the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the director incorrectly interpreted the *Handbook's* statement, that some employers seek applicants with demonstrated communication skill and training or experience, to conclude that the position does not require a college degree. Counsel states that the "other employers" referred to in the *Handbook* do not set the standard for the qualifications of a public relations specialist, and asserts that the director's narrow and restricted reading of the *Handbook* is unwarranted. Counsel states that the petitioner has submitted a letter from its president that substantiates the petitioner's need for a public relations specialist. To support her claim, counsel cites *Unico American Corp. v. Waston*, 1991 WL 11002594 (C.D. Cal. Mar. 19, 1991).

Counsel's claims are not persuasive. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the

Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the *Handbook* discloses that the duties of the proffered position resemble those of a public relations specialist and a marketing manager. According to the *Handbook*, there are no defined standards for entry into a public relations career. Candidates having a college major in journalism, public relations, advertising, or communications fill many entry-level positions. Some firms seek college graduates who have worked in electronic or print journalism; other employers seek applicants with demonstrated communication skills and training or experience in a field related to the employers business such as science, engineering, sales or finance. With advertising, public relations, marketing, sales, and promotion manager positions, the *Handbook* reports that employers find a wide range of educational backgrounds suitable for entry into the occupation, although many employers prefer those with experience in a related occupation plus a broad liberal arts background. Employers accept a bachelor's degree in sociology, psychology, literature, journalism, or philosophy. For marketing, sales and promotion manager positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. The *Handbook*, therefore, explicitly reveals that a bachelor's degree in a specific specialty is not required for the proffered position. Needless to say, a preference for a bachelor's degree or a bachelor's degree in a specific specialty is not synonymous with a requiring a bachelor's degree or requiring that the degree be in a specific specialty.

With respect to the submitted letter from the petitioner's president, the letter alleges that the petitioning entity requires a public relations specialist with a university degree to successfully compete in its industry. The letter has minimal probative value in establishing the entry-level requirements for public relations specialist and marketing manager positions as it simply communicates the employer's alleged desideratum. The letters from Herb's United Drugs, Inc., Proactive Healthcare Systems, Inc., and Caring Touch Homecare are relevant; however, three letters do not establish a minimum entry requirement or an industry standard. Only the letter from Herb's United Drugs, Inc. describes the duties of a public relations specialist; therefore, the AAO is unable to determine whether the duties of the proffered position are parallel to those of the other two positions. With all four letters, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In the *Unico American Corp.* case, an unpublished case that cannot serve as binding precedent, the judge stated that submitted evidence should be carefully considered in adjudicating petitions. The AAO has thoroughly reviewed the petitioner's evidence. As previously stated, CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Accordingly, the petitioner fails to establish the first criterion because public relations specialist and marketing manager positions do not require a degree in a specific specialty.

Based on the information contained in the *Handbook*, the AAO does not concur with counsel that the proffered position requires a bachelor's degree in a specific specialty. Counsel's declaration that the director incorrectly and narrowly interprets the DOL's qualifications for public relations specialist positions is baseless. The director properly and reasonably interprets the *Handbook's* language. The DOL plainly conveys that employers do not have defined standards for entry into a public relations career. Likewise, the DOL clearly expresses that the general trend is for employers to find a wide range of educational backgrounds suitable for entry into advertising, public relations, marketing, sales, and promotion manager positions, and that only a subset of employers prefer candidates possessing a bachelor's or master's degree in a specific specialty.

No evidence in the record, such as the industry's professional association, or letters or affidavits from firms or individuals in the industry, establishes the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations.

Counsel claims that the proffered position is unique and can be performed only by a person possessing a bachelor's degree. Counsel refers to the petitioner's letter of July 30, 2002 to state that the beneficiary would market a "closed-door" pharmacy to specific clients such as hospitals, insurance companies, and private physicians. According to counsel, because prospective clients are all professionals, the position is unique because the petitioner must develop a sophisticated marketing campaign to retain and attract clients who are all professionals. Counsel cites *American Biotech, Inc. v. INS*, ___ F. Supp. ___ (E.D. Tenn. Mar. 27, 1989) to state that a position qualifies as a specialty occupation if it is so unique that it can be performed only by a person possessing a bachelor's degree.

Counsel's claim is weak. The uniqueness of a position is not established simply because the position's prospective clients are professionals and the petitioner must develop a sophisticated marketing campaign. In order to establish the uniqueness of a position, the petitioner must distinguish the job from other positions within the same industry. No evidence is in the record that differentiates the proffered job from other positions.

Counsel states that the employer normally does not require a degree or its equivalent for the position; thus, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not established.

There is no evidence that establishes the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – that the nature of the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The *Handbook* reveals that public relations specialists and marketing managers perform the duties of the proffered position; neither of these occupations requires a bachelor's degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.